

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

DAVID L. SCHAUER,)	
)	
Plaintiff,)	CASE NO. 4:07CV3282
)	
vs.)	DEPOSITION TAKEN IN
)	BEHALF OF PLAINTIFF
BNSF RAILWAY CO., A)	
Delaware Corporation,)	
)	
Defendant.)	

VIDEOTAPE DEPOSITION OF: MICHAEL F. BARR

DATE: September 12, 2008

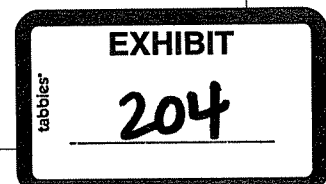
TIME: 9:03 a.m.

PLACE: 1248 O Street, Suite 800, Lincoln,
Nebraska

APPEARANCES:

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I-N-D-E-X					
	WITNESS	Direct	Cross	Redirect	Recross
4	MICHAEL BARR	3	228	--	--
	EXHIBITS			Marked	Offered
5	No. 55 Machinist Job List			3	--
6	No. 56 Web Listing-Machinist			3	--
7	No. 57 Agreement			3	--
8	No. 58 Job Bulletins			3	--
9	No. 59 Safety Analyses			3	--
10	No. 60 Safety Rules			3	--
11	No. 61 5-9-06 Letter to Abalos				
12	from Freshour			3	--
13	No. 62 5-26-04 Letter to Schauer				
14	from Watkins			3	--
15	No. 63 6-4-04 E-Mail			3	--
16	No. 64 5-5-04 E-Mail			3	--
17	No. 65 6-10-04 E-Mail			3	--
18	No. 66 6-10-04 E-Mail			3	--
19	No. 67 6-11-04 Letter to Schauer				
20	from Jarrard			3	--
21	No. 68 6-04 E-Mail String			3	--
22	No. 69 Fitness for Duty				
23	Recommendation			3	--
24	No. 70 7-7-04 Letter to Schauer				
25	from Jarrard			3	--
	No. 71 9-7-04 Letter to Loos				
	from Barr			3	--

1 S-T-I-P-U-L-A-T-I-O-N-S

2 It is hereby stipulated and agreed by and
3 between the parties that;

4 Notice of taking said deposition is
5 waived; notice of delivery of said deposition
6 is waived.

7 Presence of the witness during the
8 transcription of the stenotype notes is waived.

9 All objections are reserved until the time
10 of trial except as to form and foundation of
11 the question.

12 (Exhibit Nos. 55 through 71
13 marked for identification.)

14 MICHAEL F. BARR,
15 Of lawful age, being first duly cautioned and
16 solemnly sworn as hereinafter certified, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 BY MR. ALDRIDGE:

20 Q. Could you state your full name, please.

21 A. Michael Francis Barr.

22 Q. And what is your current address?

23 A. 6125 South 34th Street, Apartment 219,
24 Lincoln, Nebraska 68516.

25 Q. And what is your date of birth?

1 A. Actually, after that job I went over to
2 finance. And I was director of mechanical
3 budgets until 2000, summer of 2000.

4 Q. Where did you go after that job?

5 A. I came here to Lincoln to be the
6 superintendent at the diesel shop.

7 Q. That would have been mid 2000?

8 A. It was, I think, August of 2000.

9 Q. I'm sorry, what was the title?

10 A. Superintendent -- shop superintendent.

11 Q. For the diesel shop?

12 A. Diesel shop.

13 Q. Now, in the -- when you worked in the
14 diesel shop, was that always your title?

15 A. Yes, uh-huh.

16 Q. Now, when did you -- when did you
17 leave -- when did you leave the diesel shop,
18 working for the diesel shop?

19 A. May of '07.

20 Q. Where did you go from there?

21 A. Well, I took some time off. And now I'm
22 going back to school to study for a master's
23 degree. And I'm working part time currently at
24 the University of Nebraska.

25 Q. Going back to work at the diesel shop,

1 during this time. But they would keep records
2 on employees as well.

3 Q. What kind of records would they keep?

4 A. Oh, I think they kept basic, you know --
5 basic employee information, name, address, that
6 sort of thing.

7 I think they kept -- I think they kept
8 information about when a person was hired, the
9 applications that are filled out, that sort of
10 thing.

11 Q. That would be in paper form?

12 A. You know, I couldn't say. I think some
13 of it was in paper form. But I don't -- I
14 don't know.

15 Q. Did they keep any -- store any
16 information electronically?

17 A. Yes. I couldn't tell you what. But I'm
18 sure there was stuff kept electronically.

19 Q. Did you have access to those employee
20 records?

21 A. Do you mean could I sit at my computer
22 and pull up information on an employee
23 through -- is that what you're talking about?

24 Q. Yes.

25 A. I'm trying to -- I'm trying to think. I

1 don't think so.

2 Q. You also talked about they had paper
3 copies here in Lincoln?

4 A. We had documentation that the shop
5 generated. We would keep that.

6 Q. You had access to that?

7 A. Yes, uh-huh.

8 Q. What type of records would be in there?

9 A. Oh, if we had an investigation on an
10 employee, disciplinary records would be kept
11 there.

12 Again, basic information on employee
13 addresses and phone numbers, emergency contact
14 information, we would keep that.

15 If there was any injuries that occurred,
16 we would have that type of paperwork.

17 Q. What about things, like, health
18 insurance forms?

19 A. Health insurance forms? No, we didn't
20 have any -- the medical information is
21 something that was pretty closely held. We
22 didn't have any of that type of information.

23 Q. Do you have knowledge of the machinist
24 jobs in 2004?

25 A. You mean the different positions at the

1 equipment. So we would buy the biggest, like,
2 industrial-strength ladders. Probably more
3 heavy-duty than you would have at your house,
4 yes.

5 Q. How often did they have to climb
6 ladders, employees have to climb ladders on a
7 typical shift?

8 A. Boy, you're constantly climbing off and
9 on the locomotive, accessing the roof, getting
10 on top of the engine, you know. I'd have to
11 say, again, on average half a dozen times a
12 day.

13 Q. Were they carrying equipment while they
14 were climbing ladders?

15 A. Carrying equipment while you're climbing
16 a ladder is kind of a no-no because you have to
17 maintain three points of contact when you're
18 climbing the ladder, which is, you know, two
19 feet and one hand or two hands and one foot.

20 So carrying equipment while you're
21 climbing a ladder would be -- would be an
22 exception safetywise that would be taken, in
23 your hand.

24 I mean, if you had a bag on your
25 shoulder of tools or something like that would

1 A. You would -- sometimes you would --
2 sometimes we had long hooks, if you will, that
3 would hook over the locomotive. And you
4 could -- and sometimes you'd have to climb
5 up -- you know, you'd have, like, small blue
6 lights. Like I said, it was either a light or
7 a flag. So sometimes you'd have just a small,
8 blue, blinking flashlight that guys would have,
9 like, attached to their belt.

10 So you'd climb up into the cab, and
11 you'd have to put it, like, where the
12 locomotive engineer would be sitting, like,
13 right in front of him. So that's where you
14 would place it.

15 Q. How many times a day would they need to
16 climb up and down that ladder?

17 A. Well, you know, at least -- up and down
18 on the front, up and down on the rear. And
19 when you were doing -- if you did a turn-all in
20 a shift, on one locomotive, you'd have to make
21 one trip up and one trip down on both the front
22 and the rear end. I don't know if you call it
23 four times.

24 That's probably a minimum because, you
25 know, you might -- if you turn six wheels in a

1 shift, it might be on one locomotive. But you
2 might turn six wheels on a total of three
3 locomotives. So --

4 Q. Back on Exhibit 55, on page 2, machinist
5 FI dash D dash 3. It's about halfway down.
6 Job No. 8246.

7 A. Okay. That's a federal inspector.
8 That's what FI stands for. And remember I was
9 saying about the FRA requirements for a daily
10 or periodic inspection? That's what this
11 position would be focused on is inspecting all
12 of those federal items, like I said, the
13 running gear, the wheels, yeah, all -- like,
14 the hand holds, the safety appliances they're
15 called, the things you use to climb up and down
16 the locomotives, the railings themselves.
17 Those are all things that the federal inspector
18 would inspect.

19 Q. What would they be inspecting? That
20 there was -- the equipment was there or --

21 A. Well, there's tolerances for the wheels,
22 of course. Remember, I mentioned the wheel
23 gauge. He would go and gauge the wheels to
24 make sure that they were within tolerance.

25 He would check all the various safety

1 inspection, probably no.

2 Repairs, again, other tools would be
3 required to do that. But typical just doing
4 the inspection itself, no.

5 Q. Any machines, machinery?

6 A. No.

7 Q. How often would they have to -- how
8 often would they have to climb ladders in this
9 job?

10 A. Well, like I said, they're all over the
11 locomotive. So they're climbing up and down
12 that locomotive on every -- on every one. They
13 have to -- they have to inspect both the bottom
14 and the top and inside the engine compartment.
15 So there's quite a bit of ladder climbing in
16 that job.

17 Q. How many ladders are on a locomotive?

18 A. There's one on each corner. And then
19 there's typically one up the back of a
20 locomotive. And then there's one on the front
21 of the locomotive.

22 Q. So that would be six?

23 A. Yeah, I would say at least six.

24 Different models are different. But, yeah, at
25 least six.

1 Q. And any other ladders besides the
2 ladders on the locomotive they had to climb?

3 A. For federal inspector, I don't think so.

4 Q. How many steps are we talking about, do
5 we know?

6 A. One, two, three, four, I think it's four
7 steps up from the ground to the locomotive, the
8 running platform. And then the ladder up the
9 back, probably four, five rungs.

10 Q. Back on Exhibit 55, about a third of the
11 way down, job No. 8207, mach TSS input. Page
12 2.

13 A. Page 2.

14 Q. Third of the way down.

15 A. Okay. Yep.

16 Q. What is the mach TSS input job?

17 A. That's machinist. TSS is our computer
18 system, transportation service support, I
19 think.

20 That job is out on our service track.
21 And he assists the supervisor out on the
22 service track doing -- he does a lot of
23 computer work. He does occasionally fill in
24 for guys out on the service track. When the
25 supervisor steps out of the office to go take

1 could do anything.

2 Typically in the performance of the TSS
3 duties, you know, other than lifting a carton
4 of paper or something like that, I mean, that
5 would be something that he would do, you know,
6 delivering paper to the office, things like
7 that.

8 Q. Pushing and pulling?

9 A. Again, not as part of the TSS-specific
10 duties, typically, no.

11 Q. How about using hand tools?

12 A. Not on the computer end of things. But,
13 again, when he's called on to do other things,
14 he might be required to go out and fix
15 something if we needed him to.

16 Q. How about climb a ladder?

17 A. You know, when they go out and check the
18 locomotives, they would be required to climb
19 ladders maybe a couple times a day, couple
20 three times a day maybe if a supervisor needed
21 to go out and pull some documentation out of a
22 cab of a locomotive, for example.

23 There was documents in the cab of a
24 locomotive we called the blue card. And it's
25 kind of all of the basic information about a

1 locomotive, its horsepower, what kind of model
2 it is. And then it's got sign-offs for all of
3 the federal inspections that are done.

4 So supervisor might turn to the TSS guy
5 and say could you go out and grab a blue card
6 out on the locomotive on the tracks. So he
7 would, you know, go out, climb up, get the
8 paperwork and come back to the office.

9 Q. So just climbing the ladders on the
10 locomotive then?

11 A. Yeah.

12 Q. Right below that job is another job
13 called mach FRT PIT.

14 A. Right. That's -- FRT PIT is freight
15 pit. We have different names for everything.
16 That's the service track. Just like we called
17 the shop, we called it the ramps, sometimes we
18 called the service track the freight pit or
19 just the pit.

20 Q. The machinist freight pit?

21 A. Machinist freight pit, right.

22 Q. What's done at the machinist freight pit
23 position?

24 A. That's all the things I was describing
25 kind of like the Jiffy Lube environment, where

1 use?

2 A. I can't think of any.

3 Q. Climbing a ladder, you said, yes, they
4 need to be able to climb a ladder?

5 A. Yes.

6 Q. Locomotive ladder?

7 A. Locomotive ladders. Sometimes -- again,
8 depending on the nature of the repairs they
9 have to do, sometimes you need to have a ladder
10 to access parts on the engine. If you've got
11 to -- same situation I mentioned inside the
12 shop, a stepladder underneath in the pit to do
13 some repairs underneath the locomotive, that
14 would be -- that wouldn't be unusual.

15 Q. There's a pit on the service track?

16 A. Yes. The pit's on the service track and
17 in the shop, too.

18 Q. So the machinist working in the lower
19 half would be responsible for anything up
20 underneath, and --

21 A. Right.

22 Q. -- that's the ladder that that -- the
23 lower-half person would use is the stepladder
24 underneath?

25 A. Right, right.

1 Q. How often do they have to do that, use
2 that ladder, the stepladder underneath? Every
3 locomotive?

4 A. No, not every locomotive, no. Once,
5 maybe twice a day. Again, that would be a
6 repair -- it would be kind of a repair thing
7 they might have to do.

8 Q. The machinist working the upper half of
9 the engine -- the locomotive, were they
10 constantly up and down the locomotive ladders
11 or once they were up on the deck, would they
12 stay up there?

13 A. I would say once they were up, they
14 would typically -- they would stay up. Again,
15 depending on what defects, repairs have to be
16 made. But if everything on the inspection was
17 clean, then it would be once up, once down.

18 Q. Back to --

19 MR. STULL: Switching gears
20 here. Lori, do you need a break?

21 MS. WHITTAMORE-MANTZIOS: Do you
22 guys want to break?

23 THE WITNESS: I'm good.

24 MR. ALDRIDGE: Keep going.

25 Q. (BY MR. ALDRIDGE) Back on Exhibit 55, go

1 Q. Ladder climbing, again, it was the
2 locomotive ladders?

3 A. Locomotive ladders, right.

4 Q. Did both members of the team, were they
5 responsible for being able to climb up on the
6 ladder?

7 A. Right. The team consisted of a
8 machinist and electrician. That was the team,
9 together in a truck. So they had --
10 theoretically had all the expertise they needed
11 to go and fix anything that could be fixed out
12 there.

13 Q. Would the machinist be required to climb
14 up the ladder?

15 A. Yes, both machinist and electrician
16 would be, yes.

17 Q. And how often would they have to do that
18 in a day?

19 A. Gosh, a lot.

20 Q. Let's go back. How often -- each
21 locomotive?

22 A. Typically on a service track, up, down
23 once. If repairs needed to be made, multiple
24 times. But -- yeah, whenever those guys would
25 go on a locomotive, they'd be climbing up on

1 it.

2 Q. I don't recall if I asked you, but do
3 you know how many -- how many locomotives would
4 they service in a day?

5 A. Just trying to do some math in my head
6 here. Probably 15 or more. Because like I
7 said, these guys were also involved with
8 servicing -- we had fuel trucks that would go
9 out into the middle of the yard, too.

10 So if a train came in, instead of coming
11 across one of the fuel pads, if a train came
12 into the middle of the yard, it would need to
13 be fueled, sanded, supplied, just like one that
14 would come across the fuel pad. So those guys
15 would be doing all of that type of general
16 servicing work, too.

17 Q. When you say 15 or more locomotives,
18 that was a shift?

19 A. Yeah. That's kind of -- yeah.

20 Q. Or a day, 24-hour day?

21 A. Oh, a day, well -- if we're talking
22 about one guy, yeah, 15 a shift. You know, we
23 were running -- when I left, I think it was --
24 testing my memory here -- 60, 70 trains per
25 day. Each train has a couple locomotives on

1 it. So you do the math on that. It's quite a
2 few locomotives.

3 Q. Okay.

4 MR. ALDRIDGE: Let's take a
5 break.

6 (A short recess was taken.)

7 Q. (BY MR. ALDRIDGE) We're back on the
8 record. Back to Exhibit 55, page 3, third job
9 from the bottom, mach lead SW ENG.

10 A. Oh, switch engine.

11 Q. Machinist lead switch engine?

12 A. Yeah. This is -- this is -- this has to
13 be a current list because we didn't -- the
14 switch engine job didn't exist back in the 2004
15 timeframe.

16 But what this is is somebody who's
17 assigned to go around the yard and service all
18 of the yard switch engines.

19 They have locomotives out in the yard
20 that are -- that are used to build trains and
21 move cars around the yard. And they're
22 smaller, four-axle locomotives. And we refer
23 to them as switch engines.

24 They have to be inspected every day per
25 the FRA requirements and BNSF requirements.

1 maneuvering big, heavy plates of steel around
2 with the assistance of a crane. But, you know,
3 you're handling those things into place. And,
4 you know, those are -- those -- that's
5 physically demanding type of work.

6 Q. It's physically demanding because you
7 simply -- even with the assistance of the crane
8 to lift the steel into place, it was justly
9 physically demanding to maneuver that into
10 place?

11 A. Right. You're talking about trying to
12 get a big snowplow half as wide as this table
13 and weighing a few tons maybe into place where
14 you could, you know, put it onto a bolt that's
15 an inch.

16 So you get the crane, you can get it
17 close, but you're kind of having to kind of
18 manhandle it a little bit to get it exactly to
19 where you need it. Some of it's done with a
20 forklift. Some of it's done with an overhead
21 crane. So you're just dealing with a lot of
22 heavy components.

23 Q. What about climbing on a ladder?

24 A. Climbing on a ladder. Some. Probably
25 not as much as the other jobs that we've talked

1 about because, you know, like we said, most of
2 it's on the -- on the ground level. And you're
3 doing most of your work there. So, you know,
4 there's some climbing of ladders. But there's
5 probably not as much as some of the other jobs.

6 Q. Right below that entry, there's an entry
7 for mach MNT welder dash D.

8 A. Right. Those guys --

9 Q. What's that job title?

10 A. Machinist maintenance welder. Those
11 were guys who worked in our facility's
12 maintenance department. And they would, you
13 know -- they would keep the lights on, keep
14 the -- you know, keep the water running, those
15 types of things to the facility.

16 They didn't work on locomotives in the
17 normal course of their duties. Although,
18 sometimes we -- if they weren't busy, we would
19 pull them into the shop if we needed help
20 there.

21 Typically those guys would spend their
22 days maintaining -- you know, if the wheel
23 machine were broken, the maintenance guys were
24 the ones who would go and fix it. If a railing
25 was broke inside the shop, those guys would go

1 A. I'm trying to think of anything. The
2 welder obviously, cranes, forklifts. You know,
3 they drive our vehicles around.

4 Q. How do they do the fabricating?

5 A. In different areas of the shop. You
6 know, they might do some welding. There's a
7 maintenance shop over there. We've got a
8 separate building for those guys. So if they
9 need to do some -- some work on a part, they
10 could take it back to the shop, weld on it. I
11 think there's a grinder over there. There's a
12 drill press over in the main shop that they
13 would use if they had to.

14 So they would probably do the majority
15 of their work inside the maintenance building,
16 facility maintenance building.

17 Q. Are they required to climb ladders?

18 A. Yeah, obviously not so much locomotive
19 ladders but climbing up to get access to
20 different -- I mean, I think about maintaining
21 a facility that size, you know, you're using
22 things, like, ladders all the time to get to --
23 you know, I couldn't even say, various areas
24 that they needed to get into and access. That
25 would be -- being able to safely get up and

1 down on a ladder would definitely be a
2 requirement for that position.

3 Q. Were they stepladders or extension
4 ladders?

5 A. Yes, both.

6 Q. How tall was the extension ladder?

7 A. I wouldn't say it would be anything over
8 15 feet maybe.

9 Q. How often would they have to use an
10 extension ladder?

11 A. Again, as varied as locomotive work is,
12 this stuff is even more so. I would guess a
13 couple three times a day maybe. But a week
14 might go by, and they might not use one, you
15 know what I mean. Kind of hard to say.

16 Q. Again, using a bag to carry equipment?

17 A. If they had -- yeah, if they had to,
18 yeah, they would have to use a bag to carry
19 stuff up and down on a ladder.

20 Q. Were they climbing up the ladder to get
21 to someplace to repair the work, or were they
22 required to do work on the ladder?

23 A. No. They would be accessing different
24 areas. Again, I couldn't -- I'm trying to
25 think of places where they would -- where they

1 would need to get up to a height. I mean, the
2 crane maintenance, there's a ladder that gets
3 up to the overhead cranes. It's not a portable
4 ladder. It's part of the equipment. But they
5 would have to get up and access that to do
6 repairs on a crane.

7 Yeah, so there could be climbing
8 involved with their -- with their job.

9 Q. Stepladder, 6-foot stepladder?

10 A. Yeah.

11 Q. How often would they have to use a
12 stepladder?

13 A. Again, could be a few times a week.

14 Q. Few times a week or day?

15 A. Few times a week.

16 Q. Back on Exhibit 55, couple entries down
17 from where we were at, mach lead material D.

18 A. Right. Those --

19 Q. What's that title?

20 A. That's machinist lead material. And the
21 D, again, is for differential. Because it's a
22 lead position, they get an extra 50 cents an
23 hour. So that's why we put that in the
24 description.

25 Those guys manage material in our

1 and bring it over.

2 Q. If it was under 40 -- if it was over 40
3 pounds?

4 A. If it was over 40, right, yeah. I'm
5 saying 40. Again, I don't know the exact
6 number. But it's -- I'm using 40. But, yeah.

7 Q. Required to climb a ladder?

8 A. Yeah. We have some -- we have some
9 shelving in the -- I mean, it's a big -- it's a
10 big warehouse.

11 Picture all of the material that we need
12 to maintain all these locomotives. It's a big
13 area. And so if you are -- you know, if you've
14 got something on the -- the second large shelf
15 up, you might have to get on a stepladder and
16 get up and go, you know, check out a serial
17 number, something like that.

18 So like you said, mainly a desk job, but
19 they're doing -- they're managing the
20 warehouse, so they're doing other activities
21 that they need to do to do that. Some of them
22 might be climbing on a ladder. Some of them
23 might be carrying components.

24 Probably not -- we talked about pushing,
25 pulling. Probably not -- not so much that type

1 of activity. But, you know, lifting and
2 climbing ladders, I would say, yes.

3 Frequency on that stuff, you know, maybe
4 a few times a week on a ladder. Daily on the
5 carrying of components back and forth to the
6 shop.

7 Q. How many -- how many components do you
8 think they would have to carry in a day, in a
9 shift?

10 A. Again, a lot of the stuff you worked
11 with was too heavy to hand carry, so they used
12 a lot of forklifts. But maybe three times a
13 day.

14 Q. How far would they have to carry?

15 A. Oh, the distance between the warehouse
16 and the shop, 50, 50 yards, 100 yards.

17 Probably not 100. Probably more like 50 yards.

18 Q. Again, back to Exhibit 55 on page 4.

19 A. Uh-huh.

20 Q. Farther down, mach air room.

21 A. We had a --

22 Q. What's that title?

23 A. That's exactly what it is, machinist air
24 room. We had an area of the shop that was our
25 air -- we called it our air room. And what

1 Q. Do they have to climb a ladder?

2 A. Again, not in the typical course of
3 their duties. We might call -- because those
4 guys are experts working with these valves and
5 all this air equipment, they might be called
6 out to the shop to look at a particular
7 problem.

8 The air brake system on a locomotive can
9 tend to be a little finicky. And so these guys
10 might be called out as kind of the duty expert
11 to help assist with the air brake problem out
12 in the shop.

13 So normal course of their duties is
14 operating at their bench, you know, lifting
15 components on, fixing them, lifting them off.
16 And then they might get a call saying we've got
17 a locomotive in the shop, we can't fix this air
18 brake problem, can you come out and take a look
19 at it. They may need to leave their bench, go
20 out there, climb up on the locomotive, assist
21 the guys out on the ramps with the repair.

22 Q. They had to climb up on the ramp or
23 climb up on the locomotive?

24 A. They might have to climb up on the
25 locomotive. A lot of the air brake -- some of

1 the air brake equipment is below the operator's
2 cab, like, down underneath where the engineer
3 sits. In some locomotives, that's where all
4 the guts of that stuff are. And some of it is
5 down kind of on floor level.

6 But, again, that -- that's -- that
7 wouldn't be a normal part of their job. But it
8 would be an expectation that if that needed to
9 be done, that they would go out there and do
10 it.

11 Q. Okay. Going back to Exhibit 55, page 5,
12 very top entry, mach air room bench 3 dash D,
13 what is that job?

14 A. Same -- that's another air room job.

15 Q. Is it different than the other one we
16 just talked about?

17 A. Basically it's the same type of duties.
18 It's just working on a different -- maybe on a
19 different type of valve. I didn't think we had
20 any jobs that were that specific, air room
21 bench 3.

22 Again, this list seems pretty current.
23 I don't remember differentiating between
24 different benches in the air room as far as job
25 descriptions. So I don't know if this is

1 the 26 automatic air brake valve, the P2A
2 valve, the quick-release valve, the A-1
3 charging valve, et cetera?

4 A. Right, yes.

5 Q. Back on Exhibit 55, page 5, fourth entry
6 down, machinist air room ramp dash D.

7 A. I'm not familiar with that job. I think
8 that's -- I think that's a newer job since I
9 left. That doesn't look familiar to me at all.

10 Q. You don't think it existed in 2004?

11 A. No. In my head if I think back of the
12 list of jobs that we had around that timeframe,
13 you know, we had a roster basically of all of
14 the jobs and all of the different areas of the
15 shop. And I just remember air room was a list
16 of nine jobs and they were all the same job.

17 Q. If you'd take a look at Exhibit 56,
18 please.

19 A. Done with 55?

20 Q. Done with 55.

21 A. Okay.

22 Q. For now.

23 A. Okay.

24 Q. Do you recognize this document?

25 A. If I'm not mistaken, this looks like a

1 job posting from our job system.

2 Q. Is that on the website?

3 A. Right. Yeah, it's a web application
4 that we used in the hiring process. We'd post
5 jobs out there, and we would use this system to
6 manage who we invited for an interview and who
7 we decided to hire. And that's what it is.

8 Q. For internal and external applicants?

9 A. I'm trying to remember what -- I mean,
10 if we're talking in the context of 2004.

11 Q. Well, it says post date 06-30-2004.

12 A. Okay. Okay. 6-30 -- okay.

13 Q. Bottom.

14 A. I'm sorry. What was the question again?

15 Q. Was this -- was this available to
16 external applicants, external meaning people in
17 general?

18 MS. WHITTAMORE-MANTZIOS: Off.

19 A. Yeah. I want to say when they
20 implemented this system, it was for internal
21 and external candidates, if somebody went to
22 the BNSF website and looked under careers and
23 pulled up machinist jobs in Lincoln, Nebraska,
24 that they could look at what we're looking at
25 here. I think that's the way it worked.

1 Q. (BY MR. ALDRIDGE) Now, this says
2 department, Havelock shop?

3 A. Right.

4 Q. Do you know, was this a job in the
5 Havelock shop?

6 A. Machinist diesel mechanic, I don't
7 recall there ever being a diesel mechanic
8 position at the Havelock shop.

9 Q. If you'd go over to the second page.
10 Talks about duties. In reading those duties,
11 would you think that it was a diesel shop job?

12 A. Yes. Yep.

13 Q. Now, when you read those -- when you
14 read those duties, does that -- as we've
15 discussed the job duties for the different
16 jobs, does that accurately describe the duties
17 for a journeyman machinist in the diesel shop?

18 A. Yes, it sounds like a description of the
19 job at the diesel shop. And I'm not sure why
20 it says Havelock shop there. It looks to me
21 like it's a description of a job at the diesel
22 shop.

23 Q. Does it -- in that -- in this duties,
24 does it talk anything about this is a
25 physically demanding job?

1 A. I don't see where it says anything about
2 the physical qualifications for an applicant.

3 Q. Does it say anything about applicant
4 being able to climb a ladder, three-point
5 contact?

6 A. Not specifically. But if you look at
7 the duties that are described there, you know,
8 inspecting components, diagnosing malfunctions
9 in diesel engines, replacing engine components,
10 I mean, all those things -- all those things
11 require some physical aptitude. But I don't
12 see where we explicitly state that in here.

13 Q. Move on to Exhibit No. 57. Do you
14 recognize this document?

15 A. This looks like the union agreement for
16 several of our crafts, yes.

17 Q. Have you ever seen it before?

18 A. Uh-huh, yes.

19 Q. Do you know, would this have been the
20 applicable agreement in 2004?

21 A. I believe so. But there are -- there's
22 additions and changes that are made to this
23 over time that aren't included in this -- in
24 this one book.

25 Q. What additions and changes are made over

1 time?

2 A. There's some rules changes that are made
3 occasionally that are kind of -- I guess I'll
4 say amendments to this agreement. But this is
5 the basic agreement that was in place at the
6 time.

7 You know, it doesn't look like this
8 includes any of the amendments.

9 The difficulty we have with this
10 contract is, as you see, it's 1970. And I
11 think they do have a new agreement that was
12 signed fairly recently, in the past few years.
13 And when they rewrote the new agreement, they
14 included all of the amendments and changes that
15 had been made since 1970 all the way up through
16 whenever they published it. So --

17 Q. Do you know whether there were any
18 amendments that affected the machinists other
19 than pay?

20 A. Yes. But I couldn't tell you what they
21 are. Sorry.

22 Q. That's okay. If you turn to page --
23 what's page 41 of the agreement. I'm not sure
24 what page it is in the exhibit.

25 A. Okay.

1 Q. Rule 51, classification of work.

2 A. Okay.

3 Q. Have you ever seen that before?

4 A. Yes.

5 Q. And is this the rule that defines the
6 work duties of machinists?

7 A. Let's see. Yes. I think there's
8 some -- I was going to say, there's some
9 special rules, I thought. Because this
10 agreement, as you see on the front, it applies
11 to different crafts.

12 Q. Right.

13 A. So there are specific -- okay. These
14 are --

15 Q. At the top it says machinists' special
16 rules?

17 A. Special rules. Okay. That's what I was
18 thinking of. Okay. So per -- yeah, this is
19 the section of the union agreement that talks
20 about classification of work.

21 And the purpose of this document is to
22 differentiate the work of the machinist craft
23 from the work of other crafts. And so this is
24 used by the unions to say, well, you're asking
25 me to do something that's not in this scope of

1 work here or you asked this pipe fitter to do
2 work that's described in here. And so that's
3 what this document is used for, to make a
4 judgment in cases where we're asking a
5 machinist to do something that's not in here or
6 we're asking somebody else to do machinist
7 work.

8 So it's the union's way of kind of
9 protecting the duties of a machinist versus the
10 duties of an electrician, pipe fitter.

11 Q. Okay. And these are in rather generic
12 terms; correct?

13 A. Exactly. That's -- yes. And I think
14 that's -- yeah, I forgot what I was going to
15 say. But, yes, short answer is, yeah, pretty
16 generic. Pretty generically describes the
17 work. It doesn't go into as much detail as
18 this Exhibit 56 does.

19 Q. So it's less detail than 50 -- the
20 duties in 56?

21 A. Less detail, yeah, because this -- I
22 mean, you've got to understand that this
23 agreement covers machinists -- I mean, a
24 machinist at the Havelock wheel shop as well as
25 a machinist at the Lincoln diesel shop. Those

1 machinists are all in the same union,
2 obviously. So it covers all of that different
3 type of work.

4 So it's got to be a little bit generic
5 because of that.

6 Q. And so this Rule 51 doesn't describe how
7 physically demanding a machinist job would be?

8 A. I don't see anything in here that does
9 that.

10 Q. It doesn't talk about climbing ladders?

11 A. Let's see. Again, I don't -- I don't
12 see the word ladder in here. But when you look
13 at the description of the duties, you know,
14 dismantling and installing locomotives and
15 engine, pumps, cranes, hoists, elevators, it's
16 not explicit in here, but I think it's -- some
17 of this stuff's implied by the nature of the
18 work that's listed here.

19 Q. Implied in the sense that an employee
20 might know if he was working in the diesel
21 shop, that that's what he would have to do?

22 A. Yeah, I would say so. I mean, you know,
23 you're working with -- obviously it describes
24 locomotive and engine components, cranes,
25 hoists. And, you know, if you're working on a

1 crane or hoist, you could say that a job
2 requirement to work on a crane or hoist is you
3 have to work at some height. And if I was a
4 guy who's afraid of heights and I read this, I
5 might say, may not be the job for me, you know
6 what I mean.

7 But does it say that employees have to
8 be qualified to work at heights or employees
9 can't be afraid of heights? It's not that
10 specific. But I guess that's what I mean by
11 some of this stuff is implied in here.

12 Q. Okay. Exhibit 58, please.

13 A. Okay.

14 Q. It's a big document. I'm not going to
15 go through every page.

16 A. Thank God.

17 Q. You ever seen -- you ever seen these
18 pages in Exhibit 58?

19 A. Oh, this -- these look like job
20 bulletins.

21 Q. What are job bulletins?

22 A. Those are posted when we have a vacant
23 job or new job at the shop. The union
24 requirements -- union rules require us to post
25 these jobs. So they're posted on a bulletin

1 board or bulletin boards in the shop. And that
2 way if a machinist wants to bid on one of these
3 jobs, he can look at this posting and find out
4 what the requirements are, what the rest days
5 are, what it pays. And then he can put a bid
6 in for this job if he's interested in it.

7 Q. This is an internal posting?

8 A. This is internal posting, correct.

9 Q. Okay. Does this cover machinists at the
10 diesel shop, this posting, Exhibit 58?

11 A. It looks like it.

12 Q. And within this posting, there's a
13 separate section for duties?

14 A. Right.

15 Q. There's a title, and then there's the
16 duties?

17 A. Right.

18 Q. Correct?

19 A. Yep.

20 Q. Would you agree with me that the job
21 duty description is rather generic?

22 A. Well, I guess it's hard to -- it's hard
23 to describe what these guys do in a few
24 sentences. It's -- even if you look at this
25 external job posting here, it's even difficult

1 to do there.

2 I think these duties are the same as the
3 ones we went over in Exhibit 55.

4 I think it's as specific as we can be
5 with a few sentences' worth of description.
6 The guy knows by looking at this the general
7 nature of the work that he's -- that he would
8 be doing if he took this position.

9 But, no, it doesn't describe in detail
10 what the guy's workday is going to be like, no.
11 Q. And doesn't necessarily describe it as a
12 physically demanding job?

13 A. Again, if you look at -- if you're
14 familiar at all with locomotives and the work
15 we do, which as far as this internal posting,
16 machinists that work for the railroad in
17 Lincoln all would be familiar with locomotive
18 maintenance or what's required, you know, you
19 would know by looking at this that, yeah, these
20 are -- you know, this requires me to work
21 outside.

22 This one requires me to -- again, it's
23 not -- I would agree that it's not explicit in
24 terms of the physical requirements of the job,
25 but if you look at the work that's described,

1 that's implied in the description, I would say
2 particularly because this is internal and most
3 of the guys in the seniority district know what
4 these jobs entail. They just don't know what
5 the rest days are. That's on here. You know,
6 what the shift is, that's on here.

7 Q. So these are posted in more than just
8 the diesel shop? They're posted everywhere, in
9 all of the shops in the seniority district?

10 A. Yep, that would be true for jobs at the
11 diesel shop and wheel plant. If there was an
12 open job at the wheel plant, we would post it
13 at the diesel shop and vice versa.

14 Q. What shops were in the seniority
15 district?

16 A. In our seniority district would be
17 Lincoln and Havelock. Sioux City is in our
18 seniority district and Omaha.

19 There's, like, one guy in Omaha and two
20 guys in Sioux City.

21 Q. Exhibit 57 I think has a -- it's on page
22 23 of the agreement. I'm not sure what page of
23 the -- is that accurate?

24 A. Lincoln district, okay. Yeah.

25 Q. Sioux City, Iowa?

1 mean? How does this apply?

2 A. Well, these are the basic rules that
3 have to be followed in order for work to be
4 performed safely.

5 Q. There's not -- it's not defining job
6 tasks?

7 A. Nowhere in here does it say machinists
8 do this, electricians do this. It is somewhat
9 nonspecific as far as that goes.

10 There are some specific duties. If you
11 get into -- into more detail in this, I mean,
12 there's some electrical safety-type tasks.
13 There's some mechanical safety-type rules.

14 These are, for the most part, general
15 guidelines for everybody. And -- they're more
16 than guidelines. They're rules that have to be
17 followed. If someone is in violation of one of
18 these rules, then they're putting their --
19 they're putting their personal safety at risk
20 and maybe the safety of those who work around
21 them at risk. So we take that very seriously.

22 Q. Moving on to Exhibit No. 61. Have you
23 ever seen this document before?

24 A. This doesn't look familiar to me, this
25 document.

1 what's in this letter. I can't think of any
2 other sources that you could draw from to
3 provide a description of the work that we do.

4 Q. Okay. Now, back in May of 2004, did you
5 know David Schauer?

6 A. No.

7 Q. Had never met him before?

8 A. Never met him.

9 Q. Did you know of him?

10 A. No.

11 Q. So in May, you wouldn't have known about
12 his impairment to his right arm?

13 A. No.

14 Q. You wouldn't have known about his
15 previous injury to his left arm?

16 A. No.

17 Q. How did you become aware of his recall?

18 A. Well, what I recall about that process
19 is we laid some employees off in 2002 when the
20 business was going through sort of an economic
21 downturn. We had to lay 20 -- 20 or 22 people
22 off.

23 And then business started to come back
24 by 2004. And so per the union rules, before we
25 go out and hire new employees, we have to

1 A. No, I don't think I contacted him.
2 They're required to contact us. And if they
3 don't by the -- by the time the 15 days run
4 out, then -- I don't know if they're removed
5 from the seniority roster at that time or
6 exactly what happens from there.

7 This isn't the process we go through
8 very much here, furloughing and recalling
9 employees. This is the only time we did it
10 during my seven-year tenure at the shop. It's
11 not something we do every day. So the process
12 itself is not something that was real familiar
13 to me.

14 Q. Did Mr. Schauer contact you within the
15 reporting time?

16 A. My recollection is that, yeah, he did
17 contact me within that time.

18 Q. What was the next step in the process
19 after that?

20 A. Well, by the time he contacted me --
21 like you said before, at the time this letter
22 went out, I didn't know him. I didn't know
23 about the impairment to his right arm. By the
24 time he called me, I believe I was aware of the
25 situation with his right arm.

1 Q. How did you -- how did you become aware
2 of that?

3 A. I had a conversation with Harry
4 Widmeyer.

5 Q. Did you contact Harry, or did he contact
6 you?

7 A. No, I don't remember if it was me
8 calling him or him calling me. He and I kept
9 pretty close touch on machinist jobs because he
10 had a number of machinists, and I had most of
11 them. But there was occasions where there was
12 people going back and forth between the two
13 jobs -- or between the two shops.

14 And because of the seniority situation,
15 guys were allowed to bid jobs. A guy who was
16 working at diesel shop would be able to bid a
17 job at Havelock in response to one of these
18 internal postings and vice versa.

19 So there was oftentimes where one of our
20 guys would bid over to the wheel plant, to take
21 a job working for Harry. And he and I would
22 talk about who was coming over, you know, does
23 he have -- I mean, if a guy was coming to me, I
24 would ask does he have any experience, you
25 know, what's this guy like, what's his work

1 ethic, what's his safety record like. You
2 know, things so that I knew what to expect when
3 the guy showed up on our doorstep.

4 So whether it was me contacting Harry or
5 Harry contacting me, I don't really recall.

6 My initial recollection is him calling
7 me. But I don't know. It's so long ago, I
8 don't remember. I know we talked.

9 Q. And you know what you talked about
10 specifically?

11 A. We talked about Mr. Schauer's impairment
12 to his right arm. And at that time I became
13 concerned that -- became concerned with his
14 ability to safely do the tasks at the diesel
15 shop that he would be required to do.

16 Q. What did Mr. Widmeyer tell you about
17 that impairment?

18 A. The way I remember the description was
19 just that he didn't have normal function of his
20 right arm, that he did have an impairment to
21 his right arm.

22 And I never really -- I never really
23 knew exactly what that was because I'd never
24 met him. I'd never seen him.

25 I -- you know, I had a picture in my

1 mind of what -- you know, what that was. But I
2 didn't really -- I just knew that he didn't,
3 like I said, have normal function of his right
4 arm.

5 Q. Did you talk about -- did you find out
6 from Mr. Widmeyer that he had worked in
7 Havelock before?

8 A. Yes.

9 Q. And did you talk about any of his work
10 at Havelock?

11 A. Yes.

12 Q. What specifically did you talk about?

13 A. We talked about -- if I remember
14 correctly, the job that he had at Havelock had
15 something to do with moving the wheels around
16 the wheel plant. I'm not sure if it was
17 inspecting wheels when they came in.

18 We kind of in general talked about what
19 he had done before he was furloughed.

20 Q. Did Mr. Widmeyer tell you that he had
21 observed Mr. Schauer doing any of these jobs?

22 A. I don't remember Harry saying that he
23 observed him doing those jobs. I'm trying to
24 remember when Harry took that job over at the
25 wheel plant. I don't know how familiar he was

1 with Mr. Schauer before he got furloughed
2 because he got furloughed in 2002, and, again,
3 I don't recall when Harry went to the wheel
4 plant.

5 So I don't remember Harry saying
6 anything to me about him physically observing
7 Mr. Schauer doing his job at the wheel plant --
8 or -- I don't remember.

9 Q. Did you talk in generalities about what
10 his job was or did you talk specifically about
11 how Mr. Schauer was able to perform his jobs?

12 A. I want to say that we talked about the
13 impairment to his right arm and what -- how
14 that affected how he did his job at the wheel
15 plant.

16 Remember, that conversation's so long
17 ago. I mean, it was -- in general it was, you
18 know, this gentleman's being recalled from
19 furlough, you probably don't -- probably don't
20 know anything about him. And so either Harry
21 told me or I asked and he told me about, you
22 know, his description of the impairment, what
23 he used to do at Havelock, so forth.

24 Q. And then you mentioned that after that
25 conversation, you became -- became concerned

1 about his ability to work in the diesel shop?

2 A. Yes.

3 Q. What was it that caused you concern?

4 A. Well, as we went through all of those
5 job descriptions, hopefully you get the feeling
6 that they are physically-demanding jobs with
7 guys that have to do any number of different
8 tasks.

9 We mentioned pushing, pulling. We
10 mentioned climbing ladders and placing
11 components on locomotives, getting underneath
12 locomotives. And I was just concerned that
13 somebody with any form of impairment would be
14 able to safely do that -- all those -- all
15 those things I just went through.

16 Q. Now, you indicated you weren't exactly
17 clear from the conversation with Mr. Widmeyer
18 what his impairment was?

19 A. Right. I knew he had -- that he didn't
20 have all of his fingers. I knew that.

21 Q. Mr. Widmeyer told you that?

22 A. Yeah. I knew that from our
23 conversation. And --

24 Q. And it was that piece of information
25 that gave you concern that he wouldn't be able

1 to lift?

2 A. No. It wasn't specifically, you know --
3 I don't even remember what we talked about his
4 fingers. It was just a concern that all of the
5 work that we do at the diesel shop is
6 physically demanding work. There are very few
7 positions that aren't very physically
8 demanding.

9 We talked about the -- a few of them.
10 But all of them have some element of physical
11 work associated with them or could potentially
12 have that type of work associated with them.

13 And it's just a concern that I'd have
14 with -- with anybody that was coming to the
15 shop to do the job that was impaired in any way
16 physically, because I know what it takes to do
17 those jobs. Having been around there as long
18 as I was at the time and in the mechanical
19 department for the number of years that I've
20 been, I know that those jobs are physically
21 demanding.

22 So whenever that would come up, I --
23 yeah, I'd be concerned about the safety of the
24 employees.

25 Q. Did you know whether the impairment

1 limited Mr. Schauer at all?

2 A. No. I couldn't say for sure. And
3 that's why we went to the next step of having a
4 physical evaluation done to see if he could
5 safely perform the duties.

6 I'm not obviously a medical
7 professional. And so I can't make all those
8 determinations of what his physical abilities
9 are. So that's why we went down the road of
10 sending him to get a medical evaluation done
11 before we would allow him to come back to work.

12 Q. But at this stage, after this
13 conversation with Mr. Widmeyer, you're
14 concerned?

15 A. Oh, yes, yep.

16 Q. Did you have any communications with any
17 of your other supervisors about Mr. Schauer?

18 A. I don't recall any specific
19 communications with anyone else. If there was
20 any, I might have talked to Butch Bergholz,
21 only because Butch used to work at the wheel
22 plant years ago. He's the only one I might
23 have talked to. I don't recall a conversation
24 with him but --

25 Q. John Tyburski?

1 pretty closely by the medical department. And
2 we're not really allowed to see all of the
3 specifics of that stuff. We just see the --
4 kind of the interpretation, results, whatever
5 you call it from the doctor.

6 Q. On this -- on this document, this is a
7 printout I believe of the e-mail from Joy
8 George. There appears to be an icon on there
9 saying to the effect Schauer, comma, David,
10 questionnaire?

11 A. Right.

12 Q. Do you recognize that to be some kind of
13 icon?

14 A. Right. That's an e-mail attachment.
15 It's a Word document. It was the questionnaire
16 that she sent him.

17 Q. You don't recall receiving that?

18 A. I don't recall looking at it. I'm
19 trying to remember in my mind what it would
20 look like. I don't remember looking at the
21 document. Wouldn't have really mattered to me.
22 I mean, they were handling all of that at that
23 point anyway so --

24 Q. Move on to Exhibit No. 64, please. Do
25 you recognize this document?

1 A. Yes. This would be a job description I
2 sent to Angela Bailey. And I think Angela's
3 title at the time was regional manager of --
4 regional manager of safety environmental health
5 or something like that.

6 She was the person that we dealt with
7 when we had somebody who was unable to do their
8 job or any of the jobs that we had available at
9 our location. She would work with those people
10 to find other positions with the BNSF that they
11 could do within their restrictions, whatever it
12 was.

13 Typically it was a case where, you know,
14 somebody was -- had some -- an injury maybe and
15 they had some permanent restriction, work
16 restriction out of that and so that they
17 couldn't do a machinist job or electrician job
18 at the shop because they were too physically
19 demanding. Then she would work with them to
20 try and find other employment within the
21 company.

22 And so this was a request from her to
23 say would -- describe the duties of the
24 machinist to me. Because as you saw here, in
25 order to get, like, a full picture of what the

1 machinist does, we have to go to several
2 different places and put it together. So
3 that's what I tried to do here.

4 Q. Do you know -- do you know why she got
5 involved, Ms. Bailey?

6 A. Well, eventually, as you know, we
7 determined that it was our opinion that
8 Mr. Schauer couldn't perform the duties safely,
9 and so she would have worked with him to try
10 and find another job on the railroad that he
11 could do.

12 Q. But you hadn't made that -- railroad
13 hadn't made that determination yet?

14 A. Yeah, I don't know the timing on this.
15 This is June 5th. Yeah, when was Dr. Jarrard's
16 letter -- came out in July, was it? So you're
17 right. I'm trying to remember why I would have
18 sent this to her.

19 I don't know. I don't remember why I
20 would have sent this to her at this time.

21 Q. Did she -- it says in here you're
22 responding to a voice mail. Did she contact
23 you?

24 A. Yeah, I'm sure she -- I don't remember
25 the voice mail. But I'm sure she contacted me

1 and said could you send me a description of the
2 duties.

3 And I don't know if somehow she was --
4 she worked for the medical department. She
5 worked with Dr. Jarrard. I don't know if she
6 worked for Dr. Jarrard. Could have been just a
7 situation where she was assisting Dr. Jarrard
8 in doing this evaluation, you know. I don't
9 know.

10 Q. Do you know why you carbon copied Joy
11 George?

12 A. Just because we were all involved in
13 this process together, Joy, myself, Angela.
14 Yeah, just to kind of keep her in the loop as
15 to what was going on is all.

16 Q. Okay. In here in the first paragraph,
17 you state that duties at the diesel shop are a
18 lot different than the wheel plant.

19 A. Right.

20 Q. You were working at the diesel shop at
21 the time; correct?

22 A. I was, right.

23 Q. Have you ever worked in a wheel plant?

24 A. No.

25 Q. Do you know --

1 A. I've been to the wheel plant. And I've
2 observed employees at the wheel plant before.
3 But I've never worked there.

4 Q. Did you observe all of the job duties at
5 the wheel plant?

6 A. Oh, I'm sure I didn't, no. I had
7 been -- at that point I had been to the wheel
8 plant on a few occasions. I remember going
9 there and getting a tour one time from the
10 manager of the wheel plant. And we walked
11 around to the various stations that exist in a
12 wheel plant.

13 I'm sure -- I'm positive there's jobs
14 that exist there that I didn't observe, though,
15 when I was there on a few visits.

16 I remember I think at one time we did a
17 safety audit there so --

18 Q. You think that you have a thorough
19 knowledge of the job duties at the Havelock
20 wheel plant?

21 A. I wouldn't call it thorough. I think I
22 know -- at the time knew enough about what
23 those guys did out there to make the statement
24 that the jobs are quite a bit different at the
25 wheel plant than at the diesel shop.